

REMARKS

This Application has been carefully reviewed in light of the final Office Action mailed January 24, 2006 and the Advisory Action mailed June 9, 2006. To clarify various aspects of inventive subject matter, Applicant amends Claims 1, 11, 18, and 67. To advance prosecution of this application, Applicant has responded to each notation by the Examiner. Applicant submits that all of the pending claims are in a condition of allowance. Applicant respectfully requests reconsideration, further examination, and favorable action in this case.

Notice of Non-Compliant Amendment, Rule 1.121:

The Examiner rejected the claims stating that “[E]ach claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified.” Applicant has corrected the proper status identifier in Claim 11 and respectfully requests the Examiner to withdraw this rejection.

Claim Rejections – 35 U.S.C. §112 ¶1

The Examiner rejects Claims 1, 7-11, 13-14, 17-18, 24-25, 27, 33-35, and 48-66 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement because “[t]he claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.” In particular, the Examiner alleges that certain limitations recited in these claims are not described in the Specification. *See Office Action at 2-3.* Applicant respectfully disagrees. Applicant addresses each of the Examiner’s rejections of independent Claim 1 and 18 below. In addressing each of the Examiner’s rejections, Applicant may refer to example descriptions within the Specification; however, reference to these example descriptions should not be used to limit Applicant’s claims.

To satisfy the written description requirement, a patent specification must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention. *See M.P.E.P. § 2163.I.* An application’s written description is “presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the Examiner to rebut the

presumption.” *M.P.E.P. § 2163.04*. The burden falls on the Examiner to establish a “reasonable basis to challenge the adequacy of the written description.” *M.P.E.P. § 2163.04*. The Examiner must present evidence of “why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims.” *M.P.E.P. § 2163.04*; *see also M.P.E.P. § 2163.III(A)*. “The subject matter of the claim need not be described literally in order for the disclosure to satisfy the description requirement.” *M.P.E.P. § 2163.02*. “Mere rephrasing of a passage does not constitute new matter. Accordingly, a rewording of a passage where the same meaning remains intact is permissible.” *M.P.E.P. § 2163.07.I*. Additionally, “[t]o comply with the written description requirement of 35 U.S.C. 112, para. 1 . . . each claim limitation must be expressly, implicitly, or inherently supported in the originally filed disclosure.” *M.P.E.P. § 2163.05*. Consequently, a specification that conveys “with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed” satisfies the written description requirement. *M.P.E.P. § 2163.02*.

At the outset Applicant notes that one of skill in the art would recognize, based on Applicant's Specification and Figures, that the particular embodiments of the star switching fabric illustrated in Figures 4a and 4b, and discussed in the accompanying portions of the Specification can be implemented as the switching fabric of any of the routers discussed in Applicant's Specification (*e.g.*, router 12 of Figure 1, router 112 of Figure 2, or router 212 of Figure 3). In fact, Applicant's Specification specifically recognizes this by stating “FIGURES 4A-4B depict two particular embodiments of novel star switching architectures that can be implemented in any system using star switching functionality, *including the optical routers described herein*.” Page 19, Lines 13-15. Consequently, one of skill in the art would recognize that the star switching architecture illustrated in Figures 4a or 4b could be implemented as at least switching fabric 40, switching fabric 140, or switching fabric 240 of Figures 1, 2, or 3, respectively.

A. Independent Claim 1 is Described in the Specification

The Examiner rejects Claim 1 as claiming functionality and structure that is not described in the specification. Specifically, the Examiner asserts that “the signals from the integrated modules are somehow multiplexed, and then split using an optical power splitter.

Neither the specification nor the drawings suggest or illustrate such a setup.” *Office Action at* 2. The Examiner further asserts that “Figure 4a seems to be more inline with the limitations in the claim, but upon further inspection, integrated modules comprising a receiver and a transmitter are non-existent. Instead, the transmitting portions seem to be on the left side and the receiving portions seem to be on the right side.” *Id.* Applicant respectfully disagrees.

Claim 1 recites an optical communication device that includes a plurality of integrated modules, a wavelength division demultiplexer, and a controller. Applicant’s disclosure is sufficient to convey to one skilled in the art that, as of the filing date, applicant was in possession of the invention as claimed. For example, in the Application, Figure 2 illustrates one exemplary embodiment of a router 112 that includes a plurality of integrated modules (e.g., line cards 130a-130m), at least one of the integrated modules including a transmitter (e.g., transmitter 146a) and a receiver (e.g., receiver 149a). Each of the integrated modules, receiver, and transmitter illustrated in Figure 2, as described in the specification, are capable of performing their recited functionality. *See e.g.*, written description for Figures 1, 2, and 3.

Moreover, the exemplary embodiment of a router 112 of Figure 2 includes a switching fabric 140. The Specification provides that “[i]n this particular example, switching fabric 140 comprises a *star coupler switching fabric*. Star coupler switching fabric 140 receives a plurality of optical router signals 152 and may also receive one or more express channels 127 each having substantially different wavelengths. Switching fabric 140 combines information from at least some of the optical router signals 152 and/or at least some of the express channels 127 into an output optical router signal 154. Each output optical router signal 154 comprises a substantially similar set of optical router signals 152 and/or express channels 127. Star switching fabric communicates optical router signal 154 to some or all of filters 148.” Page 16, Lines 18-26. Consequently, the written description associated with Figure 2 contemplates that switching fabric 140 can comprise a star switching fabric.

Figure 4a illustrates one exemplary embodiment of a star switching fabric 40a that includes a wavelength division demultiplexer 41 that is coupled to an optical splitter 47 and, as discussed above, can be coupled to the plurality of integrated modules (e.g., 130a-130m of Figure 2). The exemplary embodiment of star switching fabric 40a illustrated in Figure 4a, as

described in the specification, is capable of performing the recited functionality. As discussed above, Applicant's Specification contemplates that the star switching fabric 40a of Figure 4a can be implemented as at least switching fabric 140 of Figure 2. Thus, the above-cited portions of Applicant's specification, along with the rest of the Application, are sufficient to convey to one skilled in the art that, as of the filing date, applicant was in possession of the invention as claimed in Claim 1.

b. Independent Claim 18 is Described in the Specification

The Examiner rejects Claim 18 as claiming functionality and structure that is not described in the specification. Specifically, the Examiner asserts that "[a]s shown in Figure 3 and corresponding portions of the specification, the power splitter is only shown to receive a single wavelength signal (i.e., 252a)." *Office Action at 3*. Applicant respectfully disagrees.

Claim 18 recites an optical communication device that includes a plurality of integrated modules, an optical splitter, and a controller. Applicant's disclosure is sufficient to convey to one skilled in the art that, as of the filing date, applicant was in possession of the invention as claimed. For example, in the Application, Figure 2 illustrates one exemplary embodiment of a router 112 that includes a plurality of integrated modules (e.g., line cards 130a-130m), each of the integrated modules including an optical signal separator (e.g., filters 148a-148m), a receiver (e.g., receivers 149a-149m), and an optical transmitter (e.g., transmitter 146a-146m). Each of the integrated modules, optical signal separator, receiver, and transmitter illustrated in Figure 2, as described in the specification, are capable of performing their recited functionality. *See e.g.*, written description for Figures 1, 2, and 3.

Moreover, the exemplary embodiment of a router 112 of Figure 2 includes a switching fabric 140. The Specification provides that "[i]n this particular example, switching fabric 140 comprises a *star coupler switching fabric*. Star coupler switching fabric 140 receives a plurality of optical router signals 152 and may also receive one or more express channels 127 each having substantially different wavelengths. Switching fabric 140 combines information from at least some of the optical router signals 152 and/or at least some of the express channels 127 into an output optical router signal 154. Each output optical router signal 154 comprises a substantially similar set of optical router signals 152 and/or

express channels 127. Star switching fabric communicates optical router signal 154 to some or all of filters 148.” *See e.g.*, Page 16, Lines 18-26. Consequently, the written description associated with Figure 2 contemplates that switching fabric 140 can comprise a star switching fabric.

Figure 4a illustrates one exemplary embodiment of a star switching fabric 40a that includes an optical splitter 47 and, as discussed above, can be coupled to the plurality of integrated modules (e.g., 130a-130m of Figure 2). The optical splitter 47 of star switching fabric 40a illustrated in Figure 4a, as described in the specification, is capable of performing the recited functionality. As discussed above, Applicant’s Specification contemplates that the star switching fabric 40a of Figure 4a can be implemented as at least switching fabric 140 of Figure 2. Thus, the above-cited portions of Applicant’s specification, along with the rest of the Application, are sufficient to convey to one skilled in the art that, as of the filing date, applicant was in possession of the invention as claimed in Claim 18.

C. Conclusion

The above-cited portions of Applicant’s specification, along with the rest of the Application, are sufficient to convey to one skilled in the art that, as of the filing date, applicant was in possession of the invention as claimed. The Examiner has not explained why Applicant’s written description fails to convey to those skilled in the art that, as of the filing date, applicant was in possession of the invention as claimed. The Examiner has not met his initial burden “of presenting evidence by a pre-ponderance of evidence why a person skilled in the art would not recognize” in the present application, a description of the invention as defined by the claims. Nevertheless, for the Examiner’s convenience, Applicant has identified example locations in the originally filed specification that support the claimed subject matter. Consequently, Applicant respectfully requests withdrawal of the rejection of Claims 1, 7-11, 13-14, 17-18, 24-25, 27, 33-35, and 48-66.

Claim Rejections – 35 U.S.C. §112 ¶2

The Examiner rejects Claims 1, 7-11, 13-14, 17, 48-55, and 67 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended Claims

1, 18, and 67. Applicant believes these amendments do not narrow the scope of the claims, but address the Examiner's rejections under §112. Applicant respectfully requests reconsideration and favorable action in this case.

Claim Rejections – 35 U.S.C. §103

The Examiner rejects Claims 36, 41, 43, 47, and 67-74 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,912,749 by Harstead et. al. ("*Harstead*") in view of the Examiner's Office Notice. Applicant respectfully traverses these claim rejections for the reasons discussed below.

Applicant provides a reminder that to defeat a patent under 35 U.S.C. § 103, "the prior art reference must teach, disclose, or suggest all the claim limitations." *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991); M.P.E.P. § 706.02(j). Applicant respectfully submit that neither *Harstead* nor knowledge supposedly generally available to those of ordinary skill in the art at the time of the invention, taken alone or in combination, teach or suggest, either expressly or inherently, a number of elements of independent Claim 36.

A. The Examiner's Purported Official Notice

At the outset, Applicant traverses the Examiner's apparent reliance on common knowledge or his personal knowledge in rejecting several claim limitations as being either obvious or considered known. *Office Action at 4-5*. Specifically, the Examiner provides that "Harstead uses a multiplexer to send each wavelength to its desired destination, which effectively fulfills the same purpose as the signal separator of the instant invention. Both techniques are widely used and well known in the art. As such, examiner takes official notice, noting that an advantage of having separators over multiplexers would be a significant increase in cost savings for components." *Id.* at 4. Applicant respectfully disagrees with the Examiner's suggestion that a multiplexer "effectively fulfills the same purpose as the signal separator of the instant invention." Moreover, the Examiner provides that, with respect to Claim 41, "the use of identifiers in such complex systems are well known in the art." *Id.* at 5

While in limited circumstances an examiner may take official notice of facts not in the record or rely on "common knowledge" in making a rejection, "such rejections should be

judiciously applied." *See* M.P.E.P. § 2144.03. It is not appropriate for an examiner to take official notice of facts without citing a prior art reference "where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art." *Id.* (citing *In re Ahlert*, 165 U.S.P.Q. 418, 420-21 (C.C.P.A. 1970)). To the extent that the Examiner maintains this rejection based on "Official Notice," "well-known art," "common knowledge," or other information within the Examiner's personal knowledge, Applicant respectfully requests that the Examiner cite a reference as documentary evidence in support of this position or provide an affidavit in accordance with M.P.E.P. § 2144.03 and 37 C.F.R. § 1.107.

B. The Proposed *Harstead*-Official Notice Combination Fails to Disclose, Teach, or Suggest Each and Every Limitation Recited in Claim 36

Applicant submits that Claim 36 is patentable over *Harstead* in view of the Examiner's Official Notice ("*Official Notice*"). Among other features, Claim 36 recites, in part, "a second integrated module that generates a second output signal comprising a second optical signal wavelength" and that "the second integrated module receives at least one of the plurality of first output optical signals." In addition, Claim 36 recites, in part, the second integrated module comprises "an optical signal separator operable to separate the first optical signal wavelength from one or more optical signal wavelengths received by the second integrated module" and "one or more transmitters each operable to generate the second output optical signal at the second optical signal wavelength and to modulate information onto the second output optical signal." Furthermore, Claim 36 recites that "the first optical signal wavelength is different than the second optical signal wavelength."

Nowhere does *Harstead* teach or suggest a second integrated module that receives at least one of the first optical signals having a first wavelength and that generates a second output signal comprising a second optical signal wavelength, where the first wavelength is different than the second wavelength. Moreover, *Harstead* fails to teach or suggest that the second integrated modules comprises a transmitter that is operable to generate the second output optical signal at the second optical signal wavelength and to modulate information onto the second output optical signal. To the extent that *Harstead* discusses a receiver

capable of receiving a first optical signal having a first wavelength, this discussion is limited to frequency dependent receivers (R1-Rn) that each receives a particular optical signal wavelength communicated by the Central Office. *See e.g., Figure 1.* However, the *Harstead* describes receivers (R1-Rn) as passive optical networks (PONs). *See e.g., Col. 3, Lines 40-52.* Applicant submits that one of skill in the art would recognize that PONs typically do not include transmitters capable of generating optical signals. Consequently, one could argue that by using PONs as receivers (R1-Rn), *Harstead* teaches away from a second integrated module that comprises a transmitter that is operable to generate the second output optical signal at the second optical signal wavelength and to modulate information onto the second output optical signal. Consequently, *Harstead* fails to teach or suggest at least a second integrated module that comprises “one or more transmitters each operable to generate the second output optical signal at the second optical signal wavelength and to modulate information onto the second output optical signal.”

Neither the Examiner’s *Official Notice* nor any other cited reference atones for the deficiencies of *Harstead*. For at least these reasons, Applicant submits that *Harstead* and the Examiner’s *Official Notice*, taken alone or in combination, fail to teach or suggest Claim 36. Applicant respectfully requests withdrawal of the rejection and full allowance of independent Claim 36 and all claims depending therefrom.

C. The Proposed *Harstead-Official Notice* Combination is Improper

The rejection of Applicant’s claims is also improper because the Examiner has not shown the required teaching, suggestion, or motivation in *Harstead* or in the knowledge generally available to those of ordinary skill in the art at the time of the invention to combine or modify the *Harstead* reference in the manner the Examiner proposes. The rejected claims are allowable for at least this additional reason.

1. The Obviousness Standard

The question raised under 35 U.S.C. § 103 is whether the prior art taken as a whole would suggest the claimed invention taken as a whole to one of ordinary skill in the art at the time of the invention. Accordingly, even if all elements of a claim are disclosed in various prior art references, which is certainly not the case here as discussed above, the claimed invention taken as a whole cannot be said to be obvious without some reason given in the

prior art why one of ordinary skill at the time of the invention would have been prompted to modify the teachings of a reference or combine the teachings of multiple references to arrive at the claimed invention. It is clear based at least on the many distinctions discussed above that the proposed *Harstead-Official Notice* combination does not, taken as a whole, suggest the claimed invention, taken as a whole. Respectfully, it appears to Applicant that the Examiner has *merely pieced together disjointed portions of references, with the benefit of hindsight using Applicant's claims as a blueprint, in an attempt to reconstruct Applicant's claims.*

The governing Federal Circuit case law makes this strict legal standard clear.¹ According to the Federal Circuit, "a showing of a suggestion, teaching, or motivation to combine or modify prior art references is an essential component of an obviousness holding." *In re Sang-Su Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433 (Fed. Cir. 2002) (quoting *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1124-25, 56 U.S.P.Q.2d 1456, 1459 (Fed. Cir. 2000)). "Evidence of a suggestion, teaching, or motivation . . . may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, the nature of the problem to be solved." *In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). However, the "range of sources available . . . does not diminish the requirement for actual evidence." *Id.* ***Although a prior art device "may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so."*** *In re Mills*, 916 F.2d at 682, 16 U.S.P.Q.2d at 1432 (emphasis added). *See also In re Rouffet*, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1457-58 (Fed. Cir. 1998) (***holding a prima facie case of obviousness not made where the combination of the references taught every element of the claimed invention but did not provide a motivation to combine***); *In Re Jones*, 958 F.2d 347, 351, 21 U.S.P.Q.2d 1941, 1944 (Fed. Cir. 1992) ("Conspicuously missing from this record is any evidence, other than the PTO's speculation (if that can be called evidence) that one of ordinary skill in the herbicidal art would have been motivated to make the modification of the prior art salts necessary to arrive at" the claimed invention.). Even a determination that it would have been obvious to one of ordinary skill in the art at the time of the invention to try

¹ Note M.P.E.P. 2145 X.C. ("The Federal Circuit has produced a number of decisions overturning obviousness rejections due to a lack of suggestion in the prior art of the desirability of combining references.").

the proposed modification or combination is not sufficient to establish a *prima facie* case of obviousness. *See In re Fine*, 837 F.2d 1071, 1075, 5 U.S.P.Q.2d 1596, 1599 (Fed. Cir. 1988).

In addition, the M.P.E.P. and the Federal Circuit repeatedly warn against using an applicant's disclosure as a blueprint to reconstruct the claimed invention. For example, the M.P.E.P. states, “***The tendency to resort to 'hindsight' based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.***” M.P.E.P. § 2142 (emphasis added). The governing Federal Circuit cases are equally clear. “A critical step in analyzing the patentability of claims pursuant to [35 U.S.C. § 103] is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. . . . Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one ‘to fall victim to the insidious effect of a hindsight syndrome *wherein that which only the invention taught is used against its teacher.*’” *In re Kotzab*, 217 F.3d 1365, 1369, 55 U.S.P.Q.2d 1313, 1316 (Fed. Cir. 2000) (citations omitted; emphasis added). In *In re Kotzab*, the court noted that to prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness. *See id.* *See also, e.g., Grain Processing Corp. v. American Maize-Products*, 840 F.2d 902, 907, 5 U.S.P.Q.2d 1788, 1792 (Fed. Cir. 1988). Similarly, in *In re Dembiczak*, the Federal Circuit reversed a finding of obviousness by the Board, ***explaining that the required evidence of such a teaching, suggestion, or motivation is essential to avoid impermissible hindsight reconstruction of an applicant's invention:***

Our case law makes clear that the best defense against the subtle but powerful attraction of hind-sight obviousness analysis is ***rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references.*** Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability—the essence of hindsight.

175 F.3d at 999, 50 U.S.P.Q.2d at 1617 (emphasis added) (citations omitted; emphasis added).

2. Argument

According to the Examiner, “it would have been obvious to a skilled artisan at the time of the invention to use a signal separator for final destination transmission However, it is clear that in such systems, the ONUs and the central office communicate with each other, as opposed to one-way transmission. If not inherent, it would have been obvious and clear to a skilled artisan at the time of invention that the ONUs would have transmitting capabilities. In addition, it is clear to a skilled artisan to use different wavelengths for transmission and reception.” (Office Action at 4-5). The Examiner provides no support in either the *Harstead* reference or in knowledge that is supposedly generally available to those of ordinary skill in the art at the time of the invention for this assertion. (*Id.*) Applicant respectfully submits that the Examiner’s assertion that it would have been obvious to modify the teachings of *Harstead* with the knowledge that is supposedly generally available to those of ordinary skill in the art at the time of the invention to purportedly arrive at Applicant’s invention is entirely insufficient to support a *prima facie* case of obviousness under 35 U.S.C. § 103(a) under the M.P.E.P. and the governing Federal Circuit case law. Consequently, the Examiner has not demonstrated the requisite teaching, suggestion, or motivation in either of the *Harstead* reference or in the knowledge that is supposedly generally available to one of ordinary skill in the art at the time of Applicant’s invention to combine or modify these references in the manner the Examiner proposes.

It appears that the Examiner has merely proposed an alleged advantage of modifying *Harstead* (an advantage which Applicant does not admit could even be achieved by combining these references in the manner the Examiner proposes). While the Examiner has cited portions of *Harstead*, the Examiner has not pointed to any portions of the cited reference or to knowledge supposedly generally available to those of ordinary skill in the art at the time of the invention that would teach, suggest, or motivate one of ordinary skill in the art at the time of invention to modify the system disclosed in *Harstead* as suggested by the Examiner. In other words, the alleged advantage of the system described by the Examiner does not provide an explanation as to: (1) why it would have been obvious to one of ordinary skill in the art at the time of Applicant’s invention (*without using Applicant’s claims as a*

guide) to modify the particular techniques disclosed in *Harstead* as suggested by the Examiner; (2) how one of ordinary skill in the art at the time of Applicant's invention would have actually done so; and (3) how doing so would purportedly meet the limitations of Claim 36. Indeed, if it were sufficient for an Examiner to merely identify, using hindsight, a purported advantage and conclude that it would have been obvious to combine or modify that reference with knowledge that is supposedly generally available to those of ordinary skill in the art at the time of the invention simply based on that advantage (which, as should be evident from the case law discussed above, it certainly is not), then virtually any two references or knowledge that is supposedly generally available to those of ordinary skill in the art at the time of the invention would be combinable just based on the fact that modifying a reference would provide a purported advantage. Of course, as the Federal Circuit has made clear and as discussed above, that is not the law.

It certainly would not have been obvious to one of ordinary skill in the art at the time of invention *to even attempt* to, let alone *to actually*, modify or combine the apparatus disclosed in *Harstead* with the Examiner's *Official Notice* in the manner proposed by the Examiner.² Applicant respectfully submits that the Examiner's attempt to modify or combine *Harstead* with the Examiner's *Official Notice* appears to constitute the type of impermissible hindsight reconstruction of Applicant's claims, using Applicant's claims as a blueprint, that is specifically prohibited by the M.P.E.P. and governing Federal Circuit cases.

Accordingly, since the prior art fails to provide the required teaching, suggestion, or motivation to modify *Harstead* in the manner the Examiner proposes, Applicant respectfully submits that the Examiner's conclusions set forth in the Office Action do not meet the requirements set forth in the M.P.E.P. and the governing Federal Circuit case law for demonstrating a *prima facie* case of obviousness. Applicant respectfully submits that the rejection must therefore be withdrawn.

² If "common knowledge" or "well known" art is relied upon by the Examiner to combine or modify the references, Applicant respectfully requests that the Examiner provide a reference pursuant to M.P.E.P. § 2144.03 to support such an argument. If the Examiner relies on personal knowledge to supply the required motivation or suggestion to combine or modify the references, Applicant respectfully requests that the Examiner provide an affidavit supporting such facts pursuant to M.P.E.P. § 2144.03.

For at least these additional reasons, Applicant respectfully submits that the proposed *Harstead-Official Notice* combination does not support a *prima facie* case of obviousness.

D. Conclusion

For at least these reasons, Applicant respectfully requests reconsideration and allowance of independent Claim 36 and its dependent claims.

No Waiver

All of Applicant's arguments and amendments are without prejudice or disclaimer. Additionally, Applicant has merely discussed example distinctions from the *Harstead*. Other distinctions may exist, and Applicant reserves the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicant are sufficient to overcome the anticipation and obviousness rejections.

CONCLUSION

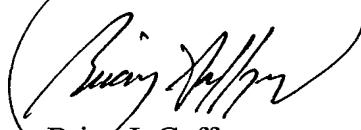
Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests reconsideration and full allowance of all pending claims.

Filing concurrently herewith is a two-month Notice to File an Extension of Time and a Request for Continued Examination (RCE) Transmittal. The Commissioner is hereby authorized to charge the fee of \$395.00 to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P. for filing this RCE. Applicant believes no other fee is due. However, the Commissioner is hereby authorized to charge any other fee or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

If the Examiner feels that a conference would advance prosecution of this Application in any manner, Brian J. Gaffney stands willing to conduct such a telephone interview at the convenience of the Examiner. Mr. Gaffney may be reached at (214) 953-6682.

Respectfully submitted,

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